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July 12, 1994

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

**Re: Reply Comments
GN Docket No. 94-33
American Mobile Telecommunications
Association, Inc.**

Dear Mr. Caton:

On behalf of the American Mobile Telecommunications Association, Inc., enclosed herewith please find its Reply Comments in GN Docket No. 94-33.

Kindly refer any questions or correspondence to the undersigned.

Very truly yours,


Elizabeth R. Sachs

ERS:cls

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

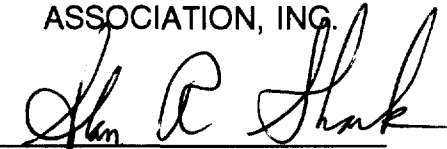
In the Matter of)
)
Further Forbearance from Title II) GN Docket No. 94-33
Regulation for Certain Types of)
Commercial Mobile Radio Service)
Providers)

To: The Commission

**REPLY COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

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FEDERAL COMMUNICATIONS COMMISSION
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To: The Commission

**REPLY COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

The American Mobile Telecommunications Association, Inc. ("AMTA" or the "Association"), pursuant to Section 1.415 of the Federal Communications Commission's ("FCC" or the "Commission") Rules (47 C.F.R. § 1.415) respectfully submits its Reply Comments in the above-captioned proceeding.¹ The Association believes that the variety of comments submitted in response to the Notice plainly shows the importance of the proper application of Title II regulations to those wireless communications licensees subject to reclassification as commercial mobile service ("CMRS") providers under the Commission's 1993 Congressional mandate.²

Responses to the Notice included a wide range of positions on the various Title II sections proposed for forbearance. AMTA's Reply Comments will focus on those areas in which it finds further information or clarification is needed.

¹ Notice of Proposed Rule Making, GN Docket No. 94-33 (adopted April 20, 1994 and released May 4, 1994) ("NPRM" or "Notice").

² Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(B), Stat. 312, 392 (1993) ("Budget Act").

I. OVERVIEW

The Association is pleased to note that many commenters agreed with the Commission's, and the Association's, position that no forbearance is warranted from imposition of Section 223 of Title II of the Communications Act of 1934 (the "Act").³ Regulation under this section would be triggered only through a CMRS provider's business decision to offer billing and collection services to "adult information providers." Further, commenters recognize the importance of public policies protecting minors from indecent communications.

Similarly, CMRS providers must make a business decision to engage in telemarketing activities before Section 227 requirements would attach. Again, many commenters agree with AMTA that forbearance from this section is not warranted.

AMTA notes that several commenters urge the Commission to forbear from imposing Section 226, Telephone Operator Consumer Services Improvement Act ("TOCSIA") requirements on CMRS providers.⁴ Among their reasons for requesting forbearance, these commenters explain that TOCSIA was implemented in response to consumer abuses by market-dominant common carriers, and that such measures are not necessary in a highly competitive wireless services market.⁵

³ See, e.g., Comments of National Association of Business and Education Radio (NABER) at 7; Comments of Nextel Communications, Inc. at 10; Comments of the Cellular Telecommunications Industry Association (CTIA) at 4-5; Comments of the Southern Company at 5.

⁴ See Comments of GTE Service Corporation at 3; Comments of Bell Atlantic Mobile Systems, Inc. ("BAMS") at 9; Comments of Nextel at 9; Comments of Alltel Mobile Communications, Inc. at 3.

⁵ See, E.g., Comments of Alltel at 3; Comments of Nextel at 15.

The Association's initial Comments in this proceeding did not advocate forbearance from Section 226 requirements, relying on the fact that its members do not currently provide operator services and are not aggregators.⁶ However, AMTA did urge strongly that the FCC consider market dominance when determining appropriate levels of forbearance,⁷ and such consideration should extend to Section 226. AMTA therefore clarifies its position and urges the Commission to forbear from imposing TOCSIA requirements where CMRS providers do not have market power, should CMRS providers offer operator or aggregator services in the future

Comments concerning Section 225, Telecommunications Relay Services (TRS), provide support for AMTA's position that CMRS providers, in general, should be exempt from providing TRS.⁸ AMTA agrees with these commenters that requiring all CMRS providers to offer TRS would impose severe technical and economic burdens on many small reclassified carriers, especially in light of the few requests for such service likely to be made of traditional SMR and 220 MHz operators. In addition, the only currently-available digital technology used for Enhanced SMR (ESMR) service does not presently interface successfully with TDD devices.⁹ AMTA does not propose to exempt any class of CMRS providers from contributions to the TRS Fund as currently calculated.

⁶ AMTA Comments at 15.

⁷ Id. at 5

⁸ See Comments of Dial Page, Inc. at 6; Comments of Nextel at 11; Comments of NABER at 7.

⁹ See Comments of Nextel 12-13.

II. DISCUSSION

A. Degree of Market Power Should Guide the Imposition of Title II Regulations.

The Title II regulations included in the NPRM were originally imposed, one by one over a course of years, on market-dominating wireline carriers. In each case, the regulation was narrowly crafted to target a specific abuse by these large companies of that market power. Due to the status of these companies as monopolies, or near-monopolies, consumers had no alternative services which would enable them to escape abusive rates and practices. Thus, the need arose for consumer protection regulation such as TOCSIA, the Telephone Consumer Protection Act of 1991 (Section 227), and the Telephone Disclosure and Dispute Resolution Act (Section 228).

The marketplace on which the FCC now considers imposing the same regulations is entirely different. The hundreds of wireless service providers, most of them small, that currently make up the CMRS arena are being confronted by a barrage of new regulations, not originally designed for them and dealing with past abuses in which they were never involved.

These companies have no market power, and are unlikely to develop market dominance. They are highly competitive within their own coverage areas for services already offered; they also seek to add new services as technology changes. Thus, a paging company may see itself as competitive not only with other paging companies (both common carrier and private under current rules), but with two-way mobile voice services, data services, cellular, wireline, even cable television and wireless cable systems which may seek to offer services comparable to those the licensee currently

offers or intends to offer in the future. Since a dominant market position would not be achievable for these operators, abuse of consumers through unfair rates or practices would amount to business suicide. AMTA agrees with the position that these carriers should not be subject to costly and burdensome regulation without a specific showing that CMRS carriers either have or are likely to engage in abusive consumer practices.¹⁰

B. Forbearance is Warranted for "Small" CMRS Providers.

Thus, the Association disagrees with those parties that misapply the concept of "regulatory symmetry" to insist that no basis exists for different regulation of CMRS providers.¹¹ These commenters tend to be very large corporations that have enjoyed market dominance, and are already subject to Title II regulations. They argue that consumer protection measures which have been imposed on monopoly wireline carriers to correct prior abuses must be extended to a wide variety of highly competitive wireless services, without regard to cost or likely benefit to the public.

However, as the Commission itself has emphasized, regulatory symmetry does not require identical regulation.¹² In its overall conversion to CMRS regulation, the Commission properly has not attempted to impose identical regulation even on those

¹⁰ See Comments of NABER at 10-11; Comments of Nextel at 15; Comments of OneComm Corporation at 4.

¹¹ See Comments of BellSouth; Comments of BAMS at 2-8; Comments of NYNEX at 3; Comments of Pacific Bell and Nevada Bell at 3-5.

¹² See Further Notice of Proposed Rule Making, Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket 93-252 (adopted April 20, 1994 and released May 20, 1994) at ¶¶ 21-24.

services found to be "substantially similar", let alone on all providers of wireless communications services. Further, the Commission has explicitly stated its goal of avoiding unwarranted costs or regulatory burdens on CMRS.¹³ Forbearance from burdensome Title II regulation is warranted for small carriers, and will not undermine the integrity of regulatory symmetry.

AMTA believes that the definition of a "small" carrier presented in its initial comments -- CMRS providers, other than paging entities, with a maximum of 5,000 subscribers nationwide -- eliminates many of the perceived concerns mentioned by commenters. Since it does not link carrier size to revenue, carriers need not report confidential financial data, nor must the FCC monitor financial status. Also, concerns over carrier size in different geographic areas are unnecessary, since this definition includes an entity's total nationwide customer base.¹⁴

AMTA's recommended definition would not be unduly burdensome for carriers to comply with or the Commission to administer, since SMR operators must now keep such records to comply with loading requirements. Further, all common carriers are now required to report numbers of subscribers to the FCC annually for purpose of calculating regulatory fees. The case-by-case examination for purposes of forbearance suggested by some commenters¹⁵ would be far more burdensome for both carriers and the Commission, which does not have the resources to handle the dozens of

¹³ NPRM at ¶ 5.

¹⁴ See Comments of BAMS at 5-6.

¹⁵ Id. at 7-8; Comments of E.F. Johnson at 9-10.

individual forbearance requests which would certainly arise.

AMTA agrees that the Commission's suggestion of forbearing from regulating providers charging less than half the current cellular rate is inappropriate.¹⁸ The CMRS industry is competitive enough under current dynamic market forces, and does not require drastic, artificial incentives to lower rates. Further, consumer protection, if warranted, should not be prevented based on the unrelated fact of a carrier's overall rates to the public. Consumer protection measures should be selectively implemented where abuses exist, such as the unreasonable rates for particular services which led to the regulation in the first place.

AMTA urges the Commission to forbear from imposing costly regulatory requirements on carriers meeting its definition. The additional costs of conforming to technical and operating requirements contained in the NPRM's Title II sections could drive marginal small licensees, such as many local, traditional SMR operators, out of business, thereby reducing local competition. Less drastically, these costs could hurt business margins to the point that potential new operators are discouraged from entering the CMRS marketplace, and existing private operators elect not to provide services that would subject them to these regulations. Likely effects of this rule making proceeding, therefore, would run exactly counter to Congress's and the Commission's stated objective of encouraging competition and the development of new communications services.

¹⁸ Comments of BAMS at 6.

III. CONCLUSION

For the reasons described, AMTA urges the Commission to complete this proceeding consistent with the recommendations contained herein.

CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 12th day of July, 1994, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Reply Comments to the following:

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Federal Communications Commission
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- * Commissioner Andrew C. Barrett
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